

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

December 19, 2013 at 2:30 p.m.

1. [11-94410-E-11](#) **SAWTANTRA/ARUNA CHOPRA** **CONTINUED PRE-TRIAL CONFERENCE**
 [12-9008](#) **RE: COMPLAINT**
 CHOPRA ET AL V. LOANVEST XI, **4-30-12 [[1](#)]**
 LP

Plaintiff's Atty: Evan D. Smiley
Defendant's Atty: Stephen D. Finestone

Adv. Filed: 4/30/12
Answer: 9/12/12

Nature of Action:
Recovery of money/property - turnover of property
Declaratory judgment
Determination of removed claim or cause

Notes:

Continued from 10/10/13 by stipulation of the parties.

Final Ruling: The Status Conference is continued to 10:30 p.m. on January 16, 2013 pursuant to the Stipulation filed December 16, 2013, Dckt. 63. No appearance at the December 19, 2013 Status Conference is required.

2. [11-94410](#)-E-11 SAWTANTRA/ARUNA CHOPRA
[12-9027](#)
LOANVEST XI, LP V. CHOPRA

Plaintiff's Atty: Charles A. Hansen; Stephen D. Finestone
 Defendant's Atty: Evan D. Smiley

Adv. Filed: 8/31/12
Answer: none

Notes:

Continued from 10/10/13 by stipulation of the parties.

Final Ruling: The Status Conference is continued to 10:30 p.m. on January 16, 2013 pursuant to the Stipulation filed December 16, 2013, Dckt. 54. No appearance at the December 19, 2013 Status Conference is required.

3. 12-91912-E-7 GEORGE/LORI AZEVEDO
13-9020
MCGRANAHAN V. SILVA ET AL

ADV. DISMISSED 11/23/13

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: Fred A. Silva; Iain A. MacDonald

Adv. Filed: 5/9/13
Answer/Crossclaim: 6/19/13

Nature of Action:
Recovery of money/property - preference
Recovery of money/property - other

Final Ruling: The Adversary Proceeding having been dismissed, the Pre-Trial Conference is removed from the calendar.

Notes:

[SSA-1] Stipulation for Entry of Dismissal of Adversary Proceeding filed 11/18/13 [Dckt 18]; Order granting filed 11/23/13 [Dckt 19]

4. [12-93136-E-7](#) MARIA ALCANTAR
[13-9008](#)
ALCANTAR V. RT FINANCIAL, INC.
ET AL

CONTINUED STATUS CONFERENCE RE:
AMENDED COMPLAINT
3-28-13 [[17](#)]

Plaintiff's Atty: Brian S. Haddix
Defendant's Atty: Michael S. Warda

Adv. Filed: 3/5/13
Amd Cmplt Filed: 3/6/13
Second Amd Cmplt Filed: 3/28/13

Answer: none
Amd Cmplt Answer: 5/6/13

Nature of Action:
Recovery of money/property - other
Injunctive relief - other
Other (e.g. other actions that would have been brought in state court if
unrelated to bankruptcy case)

The Status Conference is removed from the calendar, the Adversary Proceeding
having been dismissed. No appearance at the December 19, 2013 hearing is
required.

Notes:

Continued from 11/21/13 to allow the court to rule on the Plaintiff's motion
to dismiss the adversary pursuant to a stipulation of the parties.

[BSH-2] Plaintiff's Motion to Dismiss Adversary Proceeding filed 11/20/13
[Dckt 37], set for hearing 12/19/13 at 2:30 p.m.

5. [12-93136-E-7](#) MARIA ALCANTAR
[13-9008](#) BSH-2
ALCANTAR V. RT FINANCIAL, INC.
ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING
11-20-13 [[37](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant on November 20, 2013. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

Final Ruling: The Motion to Dismiss Adversary Proceeding was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Dismiss Adversary Proceeding. No appearance at the December 19, 2013 hearing is required.

Plaintiff Maria Alcantar moves to dismiss the adversary proceeding pursuant to Federal Rule of Civil Procedure 41(a)(2). Plaintiff states she and defendant jointly request the court to dismiss the case because the parties have reached a settlement agreement, which they have all executed. Plaintiff has attached the settlement agreement as Exhibit A. Dckt. 40.

Based on a review of the settlement agreement and the agreement of both Plaintiff and Defendants to dismiss the adversary proceeding, the court dismisses the adversary proceeding with prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss Adversary Proceeding filed by Plaintiff having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Adversary Proceeding is dismissed with prejudice.

6. [12-92049-E-7](#) ROBERT/KATHERINE
[12-9032](#) MATTEUCCI
GRANT BISHOP MOTORS, INC. V.
MATTEUCCI ET AL

PRE-TRIAL CONFERENCE RE:
COMPLAINT OBJECTING TO DEBTORS'
DISCHARGE AND DISCHARGEABILITY
OF DEBTS AND TURNOVER OF
PROPERTY
11-2-12 [[1](#)]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: Pro Se

Adv. Filed: 11/2/12
Answer: 1/2/13

Nature of Action:
Objection/revocation of discharge
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury
Dischargeability - other

Notes:

Scheduling order -
Initial disclosures by 3/15/13
Disclose experts by 6/14/13
Exchange expert reports by 6/14/13
Close of discovery 9/30/13
Dispositive motions heard by 11/30/13

Motion to Dismiss filed by Defendants 12/2/13 [Dckt 29], court set for
hearing 1/16/14 at 10:30 a.m.

Plaintiff's First Pretrial Statement filed 12/11/13 [Dckt 35]

7. [13-91349-E-7](#) JASON RIVERS
[13-9034](#)
MODESTO IRRIGATION DISTRICT V.
RIVERS

STATUS CONFERENCE RE: COMPLAINT
10-2-13 [[1](#)]

Plaintiff's Atty: Merle C. Meyers
Defendant's Atty: Thomas P. Hogan

Adv. Filed: 10/2/13
Answer: 11/15/13

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:

Joint Status Conference Statement filed 12/12/13 [Dckt 12]

SUMMARY OF COMPLAINT

The Complaint alleges that the Debtor used electrical services after they had been terminated. This was done by the unauthorized tampering with the electrical service delivery systems of Plaintiff. The value of the unauthorized service used is \$109,315.65. Relief is sought pursuant to 11 U.S.C. § 523(a)(2), (4), and (6).

SUMMARY OF ANSWER

The Answer contains specific admissions and denials. In addition, eleven affirmative defenses are asserted.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), asserting claims under 11 U.S.C. § 523(a)(2), (4), and (6). Complaint ¶¶ 1, 2,, 3 Dckt. 1. In its answer, Jason Rivers, Defendant, admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 7. **To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.**

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), asserting claims under 11 U.S.C. § 523(a)(2), (4), and (6). Complaint ¶¶ 1, 2,, 3 Dckt. 1. In its answer, Jason Rivers, Defendant, admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 7. To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before December 12, 2013.
- c. Expert Witnesses shall be disclosed on or before March 12, 2014, and Expert Witness Reports, if any, shall be exchanged on or before March 12, 2014.
- d. Non-Expert Witness Discovery closes, including the hearing of all discovery motions, on February 28, 2014.
- e. Expert Witness Discovery closes, including the hearing of all discovery motions, on April 11, 2014.
- f. Dispositive Motions shall be heard before -----, 2014.
- g. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

8. [13-90465](#)-E-7 KIMBERLY VEGA
[13-9028](#)
MCGRANAHAN V. VEGA

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-14-13 [[1](#)]

Plaintiff's Atty: Steven S. Altman
Defendant's Atty: Thomas O. Gillis

Adv. Filed: 8/14/13
Summons Reissued: 8/21/13

Answer: 11/15/13

Nature of Action:
Objection/revocation of discharge

Notes:

Continued from 10/10/13

Stipulation [re vacate default] filed 11/13/13 [Dckt 24]; Order granting
filed 11/14/13 [Dckt 26]

9. [10-94467](#)-E-7 TINA BROWN
CWC-4

CONTINUED MOTION FOR CONTEMPT
7-11-13 [[63](#)]

CONT. FROM 10-31-13, 9-26-13, 8-22-13

Local Rule 9014-1(f)(1) Motion - Continued Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Tim Brown, Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, and Office of the United States Trustee on July 11, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Contempt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion for the Court to Issue an Order to Show Cause why Tim Brown should not be held in contempt or subject to other sanctions is granted. The court orders that Tim Brown pay \$xxxx in sanctions to the Clerk of the Court and \$xxxx in attorneys' fees and costs as damages for failure to comply with the Mandatory Injunction and Order of this court. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the

court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 7 Trustee, Michael D. McGranahan, moves the court for an Order to Show Cause why Tim Brown should not be adjudged in civil contempt for failing and refusing to comply with the Judgment of the court. The Trustee states that the court entered judgment in Adversary Proceeding No. 12-09003 against Tim Brown determining that the following vehicles are property of the bankruptcy estate with a total value of \$42,915.00, which must be turned over by Mr. Brown to the Trustee on or before December 31, 2013:

(a) 1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282;

(b) 2008 Harley Davidson Cross Bones Motorcycle, VIN ending in 40575;
and

(c) 2007 Chevrolet Corvette Automobile, Licence No. 5XYR543, VIN ending in 33800.

The Trustee states that he has made repeated requests to Mr. Brown and his counsel seeking compliance with the Judgment for the turnover of the property, but Mr. Brown has failed and refused to turn over the vehicles.

Additionally, the Trustee states he has incurred attorney's fees in the amount of \$1,593.56 in fees and expenses incurred in employing his counsel to enforce the Judgment.

DISCUSSION

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Here, the Trustee has shown that Time Brown has failed to comply with the court's Judgment order to turn over the personal property described above. Tim Brown has failed to respond to the Motion as required under Local Bankruptcy Rule 9013-1(f)(1).

AUGUST 22, 2013 HEARING

At the August 22, 2013 hearing Tim Brown and his counsel, David Foyil, appeared in response to the Motion. At the hearing, David Foyil and Tim Brown offered the following explanations as to why the court's prior judgment and order for the turn over of the vehicles had not been complied with by Tim Brown.

- A. After the entry of the judgment Tim Brown and his representatives, communicated with the Trustee about Tim Brown purchasing the vehicles from the Trustee rather than turning them over to the Trustee.
- B. Because there are liens on (at least some of) the vehicles, Tim Brown thought that he could retain possession of them so long as he made monthly payments on those obligations.
- C. Tim Brown spoke with some attorney (it not being made clear the identify of the attorney) who is purported to have told him that he could retain possession of the vehicle notwithstanding this court's judgment and order for possession.
- D. Tim Brown represented to the court and Trustee that the 2008 Harley Davidson was "run over" and is "in pieces" at a number of different locations. Tim Brown also represented that he did not maintain insurance on the 2008 Harley Davidson which he did not turn over to the Trustee.
- E. When the attorney for the Trustee unequivocally communicated to David Foyil (counsel for Mr. Brown) that the negotiations with Mr. Brown were concluded when Mr. Brown had failed to provide payment to the Trustee for the vehicles, Mr. Foyil reports that it was his office who failed to communicate with Tim Brown to turn over the vehicles. Mr. Foyil agrees to pay the \$1,593.56 in legal fees incurred by the Trustee.

The court appreciated, at that time, both David Foyil and Tim Brown having appeared at the court hearing on August 22, 2013, and not requiring the U.S. Marshal to otherwise waste time and resources to take Mr. Brown into custody and present him in court as ordered. However, the court does not find reasonable Tim Brown's contentions that he thought he did not have to comply with the judgment and order of this court to turn over the vehicles.

The court found Tim Brown has failed to comply with the Judgment and Order of this Court ("December 13, 2012 Judgment and Order"). Adv. Proc. 12-9003, Dckt. 41. Compliance with federal court judgments and orders is not optional. This court has the power and authority to compel compliance with orders and judgments through the issuance of corrective sanctions. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); 11 U.S.C. § 105(a), addressing the inherent civil contempt power exercised by judgments of the bankruptcy court.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to

reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

It was necessary and appropriate for the exercise the civil contempt power of this court to enforce the December 13, 2012 Judgment and Order. David Foyil shall pay the Chapter 7 Trustee \$1,593.56 to compensate the estate for the legal fees and expenses incurred in connection with the present Motion caused by Tim Brown failing to comply with the December 13, 2012 Judgment and Order. This is ordered as the payment of expenses incurred and not as "sanctions" against counsel.

It was also necessary and appropriate to order corrective monetary sanctions, to be paid, if Tim Brown fails to comply with the order issued by the court pursuant to this Motion. To the extent that Tim Brown suffered from any "confusion" (whether created in his own mind or by unnamed persons), there is no confusion that the court has ordered him, in open court at the August 22, 2013 hearing to turn over the following vehicles:

- A. The 1997 Harley Davidson Red Fat Boy Motorcycle, shall be delivered by Tim Brown to the Trustee at Huisman Auctions, inc., 13070 W. Stockton Blvd., Galt, California, during regular business hours on or before 4:00 p.m. on August 28, 2013.
- B. The 2007 Chevrolet Corvette Automobile, License No. 5XYR543, VIN IGIYY26U575133800, shall be delivered by Tim Brown to the Trustee at Huisman Auctions, inc., 13070 W. Stockton Blvd., Galt, California, during regular business hours on or before 4:00 p.m. on September 4, 2013.
- C. With each vehicle, Tim Brown shall turn over the current registration, title documents, the names of any lien holders, and contact information for such lien holders.

The dates to turnover the vehicles in compliance with this court's judgment were sent with the concurrence of Tim Brown. He expressly represented to the court that he would have the vehicles turned over within the above time periods and did not require any additional time.

The court did not issue a further order at this time for the turn over of the 2008 Harley Davidson which is asserted to be "in pieces." The December 13, 2012 Judgment and Order includes a monetary judgment amount for each vehicle, which may be enforced by the Trustee. The court left it to the Trustee to determine if the "in pieces" 2008 Harley Davidson should be turned over, or if the Trustee believes that he should enforce the monetary judgment to recover the value of this vehicle which Tim Brown retained possession of and did not insure.

As corrective sanctions, the court provided that it would order Tim Brown to pay \$2,500.00 if he fails to timely turn over the 1997 Harley Davidson Red Fat Boy Motorcycle and a separate \$2,500.00 if Tim Brown fails to timely turn over the 2007 Chevrolet Corvette Automobile. Tim Brown had the ability to

avoid paying the corrective sanctions by complying with this order of the court. Again, the court set the deadlines for the turn over of the two vehicles after confirming with Tim Brown and his counsel in open court that such vehicles can be so delivered by Mr. Brown.

The court continued the hearing on this Motion to obtain confirmation that both vehicles have been turned over and whether the corrective sanctions must be ordered because of his future non-compliance.

SEPTEMBER 26, 2013 HEARING

On September 4, 2013, the Trustee filed a report of sale of the Debtor's 2004 Harley Davidson Duece Softtail back to the Debtor Tina M. Brown for a total sum of \$5,000.00. Dckt. 80.

On September 24, 2013, the Trustee filed a Report stating that as of September 24, 2013, Tim Brown failed to turn over possession of the 1997 Harley Davidson Red Fat Boy Motorcycle and the 2007 Chevrolet Corvette Automobile.

The Trustee also reported that the documents provided to him by counsel for Tim Brown demonstrate that on or about May 1, 2013, Tim Brown encumbered the 2007 Corvette and 1997 Harley Davidson by purporting to grant Francine Phillips a security interest in the vehicles. This granting of a security interest was in violation of the automatic stay and contrary to the court's December 31, 2013 judgment.

Though Tim Brown expressly represented to the court that he would turn over possession of the two vehicles to the Trustee as previously ordered, the Chapter 7 Trustee reported that the vehicles have not been turned over. David Foyil appeared at the hearing, stating that he may be appearing in connection with this Motion to represent Tim Brown. The court instructed David Foyil to either file a notice of appearance or, as provided by the Local District Court Rules and Local Bankruptcy Rules, the next hearing at which he appears for Tim Brown shall be deemed an appearance and he shall be the attorney of record for Tim Brown in this Contested Matter.

Tim Brown offered no explanation or excuse for failing to comply with the court's prior order at the hearing (he did not appear). Further, he offered no explanation as to why or how he has failed to comply with the order which was set based upon his confirmation of ability to turn over the vehicles or why he has not complied with the express promises he made to the court and Chapter 7 Trustee at the August 22, 2013 hearing.

The court ordered that Tim Brown shall pay corrective sanctions of \$31,915.00 to the Clerk of the Court if the (1) 1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282 and (2) the 2007 Chevrolet Corvette Automobile, Licence No. 5XYR543, VIN ending in 33800, are not delivered to the Chapter 7 Trustee by the close of business on October 15, 2013. David Foyil, who appears as the possible attorney for Tim Brown confirmed at the September 26, 2013 hearing that he would communicate those date and the corrective sanction to Tim Brown, in addition to the Clerk of the Court serving the order on Tim Brown.

The \$31,915.00 sanction was determined an appropriate amount because it represents the value of the two vehicles. Given Tim Brown's conduct to date, a lesser amount would likely not have the necessary corrective effect and induce compliance with the court's order. A lesser amount could cause Tim Brown to conclude that he can just "buy the vehicles" and "buy off the court" for an amount less than the vehicles are worth.

If Tim Brown fails to turn over the vehicles as ordered by the court, then the court shall impose the \$31,915.00 in corrective monetary sanction and set the Motion for further hearing with a higher corrective sanction amount. Only after exhausting the higher monetary sanction amount will the court consider a corrective incarceration sanction or referring this matter to the U.S. District Court for the imposition of appropriate punitive sanctions, including incarceration for such period of time as the District Court judge determines appropriate for the failure to comply with this court's order.

The Chapter 7 Trustee was ordered to file an updated Status Report on or before October 22, 2013. The Trustee also was ordered to file any request for attorneys' fees and costs in connection with Tim Brown's failure to comply with the order of this court to turn over the vehicles, which may include costs and fees projected through the October 31, 2013 hearing.

STATUS REPORT

Carl Collins, Counsel for the Chapter 7 Trustee, filed a declaration stating that Tim Brown has failed to comply with the order of this court and no vehicles have been turned over the Trustee's auctioneer.

Counsel states that he conducted a lengthy telephonic conference with Mr. Brown discussing the default of the court's order and the continued hearing and advising him to seek the advice of independent counsel. Counsel states Mr. Brown was planning to register a complaint with the Office of the U.S. Trustee in this matter.

Counsel testifies that for the period of July 3, 2013 through October 22, 2013, he has rendered legal services to the bankruptcy estate in the amount of \$2,532.00 and incurred costs of \$151.34 for a total of \$2,683.34 in connection with this matter.

TIM BROWN'S LETTER

On October 15, 2013, Tim Brown filed a letter from him to the Office of the U.S. Trustee, dated October 10, 2013. Mr. Brown states his rights are being violated and asks the U.S. Trustee to stay the motion as the court "ignored" several facts when issuing the order. Mr. Brown appears to dispute the value of the 1997 Fatboy Harley and the 2007 Corvette.

Upon review of the Response from Tim Brown the court reviewed the Adversary Proceeding and the statements and representations made therein by Tim Brown and his counsel. What Tim Brown asserted in the Adversary Proceeding stand in stark contrast to the excuses he now offers and complaints as to the judicial process for his failure to comply with the judgment and order of this court.

In the Adversary Proceeding McGranahan v. Tim Brown, ADV. No. 12-09003, the Complaint was filed on February 24, 2012, and the Answer by Tim Brown and his counsel was filed on March 25, 2012. The Chapter Plaintiff Trustee filed a Motion for Summary Judgment, to which Tim Brown failed to file any opposition or response. At the October 31, 2012 hearing on the Motion for Summary Judgment, the court required the Plaintiff Trustee to file supplemental pleadings which specifically identified the evidence which supported the alleged undisputed facts. 12-09003 Dckt. 29.

On November 5, 2012, the Plaintiff-Trustee filed the Supplemental Statement of Undisputed Facts, Dckt. 31, which specifically referenced the evidence in support of that fact. These undisputed facts included the following.

- A. Plaintiff-Trustee commenced this adversary proceeding on February 24, 2012. Complaint, Dckt. 1.
- B. A copy of the summons and complaint were served on Defendant on February 29, 2012. Proof of Service, Dckt. 6.
- C. Defendant filed an answer denying the substantive allegations in the complaint on March 25, 2012. Answer, Dckt. 7.
- D. Defendant was served with Plaintiff's request for admissions on July 17, 2012. Proof of Service, Dckt. 22.
- E. Defendant failed to timely file a response to Plaintiff's First Request for Admissions on or before August 16, 2012. Adversary Proceeding Docket.
- F. Defendant served an untimely response to Plaintiff's First Request for Admissions on August 23, 2012. Response and Proof of Service, Exhibit 1, Dckt. 27.
- G. Defendant has not moved for withdrawal or amendment of the resulting deemed admissions. Adversary Proceeding Docket.
- H. Defendant is deemed to have admitted that the aforementioned vehicles are property of the estate since Defendant has not filed a timely response to Plaintiff's First Request for Admissions. Request for Admissions, pages 5:24 through 6:13, Dckt. 22.
- I. Defendant is deemed to have admitted that the aforementioned vehicles are in his possession since Defendant has not filed a timely response to Plaintiff's First Request for Admissions. Request for Admissions, page 6:16-18, Dckt. 22.
- J. Defendant is deemed to have admitted that Plaintiff/Trustee has demanded turnover of property and that Defendant has failed to turnover vehicles to the bankruptcy estate. Request for Admissions, pages 6:21 through 7:5, Dckt. 22.

- K. On August 22, 2011 Debtor, Defendant, and state court counsel executed a stipulation for judgment describing the character of property in the marriage between Debtor and Defendant. Request for Admissions, pages 5:24 through 6:6, Dckt. 22; and Certified Copy of State Court Dissolution Judgment, Exhibit 2, Dckt. 27.
- L. On August 28, 2011 Tuolumne County Superior Court entered a dissolution judgment incorporating a stipulation for judgment to dissolve the marriage and divide community and separate property of the Debtor and Defendant. Certified Copy of State Court Dissolution Judgment, Exhibit 2, Dckt. 27.
- M. In the Dissolution Judgment the state court determined that the 2008 Harley Davidson Cross Bones motorcycle has a fair market value of \$11,000 and is the community property of the Debtor and Defendant. Certified Copy of Dissolution Judgment, Exhibit 2, Dckt. 27.
- N. In the Dissolution Judgment the state court determined that the 2007 Chevrolet Corvette had a fair market value of \$24,915 and is the community property of the Debtor and Defendant. Certified Copy of Dissolution Judgment, Exhibit 2, Dckt. 27.
- O. In the Dissolution Judgment the state court determined that the 1997 Harley Davidson had a fair market value of \$7,000 and is the separate property of Debtor awarded to defendant. Certified Copy of Dissolution Judgment, Exhibit 2, Dckt. 27.

The court granted the Motion for Summary Judgment (Order, Dckt. 39) and Judgment was entered for Plaintiff-Trustee on December 13, 2013 (Judgment), Dckt. 41. The Judgment includes a mandatory injunction requiring Tim Brown to turn over the three vehicles by December 31, 2013.

In this Bankruptcy case the Plaintiff-Trustee first filed a Motion for Turnover of Property on January 5, 2012. In it the Plaintiff-Trustee alleged that on September 19, 2011, Trustee discovered that the Debtor had transferred to Tim Brown property of the estate post-petition purportedly through a marital dissolution property division. Further, that Tim Brown and Tina Brown stipulated, and an order entered thereon on November 17, 2011, to vacating the purported division of property in the state court dissolution. This motion for turnover was filed three months after the Trustee learned of the purported post-petition transfer of these vehicles.

Tina Brown filed an opposition to the Motion, stating that she was in possession of the 2006 Harley Davidson Screaming Eagle motorcycle and would turn it over to the Trustee. Dckt. 29. The Motion was settled (order approving the compromise, Dckt. 50), which included the Debtor turning over possession of the motorcycle to the Chapter 7 Trustee.

On April 3, 2013, the Plaintiff-Trustee filed his Motion and gave Notice of Auction that the Screaming Eagle Motorcycle would be sold at public auction, to be conducted by Huisman Auctions, Inc. Dckt. 45. The Trustee estimated that the motorcycle would sell for \$10,000.00. Tim Brown was served with this Motion and Notice of Auction. Certificate of Service, Dckt. 48. The

auction was conducted and the Report of Sale states that it was sold for \$8,000.00.

In his letter to the U.S. Trustee, Tim Brown complains that the Chapter 7 Trustee sold the 2005 Duce Harley Davidson back to Tina Brown for only \$5,000.00, with payments of \$1,000 a month. He asserts that the Blue Book was \$11,000.00. However, the sale was conducted by the Trustee pursuant to a Motion and Notice of Sale, Dckt. 19. This Motion and Notice of Sale was served on Tim Brown. Certificate of Service, Dckt. 22. While Tim Brown complains that the sales price of \$5,000.00 is less than his asserted \$11,000.00 value, the actual sales price equates to more than \$10,000.00.

The Estate was paid \$5,000.00 cash by Tina Brown. The Debtor claimed a \$2,725.00 exemption. For a \$10,000.00 sale at auction, there would have been a 15% fee, which totals \$1,500.00. From a \$10,000.00 sale, the Trustee could expect to recover a net of \$5,775.00. The recovery of \$5,000.00 is reasonable in light of avoiding the vagaries of an auction sale. This is consistent with the value as stipulated by Tim Brown in the state court action. Further, having notice of the sale, if Tim Brown believed it had a higher value, he could have presented his own higher offer. He did not.

Tim Brown complains that the 2007 Corvette secures a debt for which he is personally liable, with that debt being in the amount of \$18,000.00. If such a pre-petition debt existed, then the Trustee would ultimately take that into account in deciding how to administer the vehicle. However, other than Tim Brown complaining in his letter to the U.S. Trustee, he and his counsel did not present evidence of that to the court, did not seek to have the Corvette abandoned, if he deemed there to be no value for the estate, or otherwise take any action other than to violate the mandatory injunction in this court's judgment and order to turn over the Corvette.

Tim Brown complains that the Trustee has valued the 2007 Corvette at \$22,000.00. This is consistent with the value stipulated to by Tim Brown and Tina Brown for the Dissolution Judgment (that amount being \$24,915, Exhibit 2, 12-09003 Dckt. 27). That is the value of the vehicle. If it is subject to a pre-petition lien, then the Trustee must address that lien. However, a lien does not change the value of the underlying property.

Tim Brown complains that the court "advised" the Trustee could charge Tim Brown \$4,000.00 in attorneys fees. At the October 1, 2013 hearing the court granted the then pending motion to have Tim Brown held in contempt for failing to turnover the vehicles. That motion requested the allowance of attorneys fees, which the court granted. The court required the Plaintiff-Trustee to file a written documentation of the requested attorneys' fees, which would be subject to review, and opposition, by Tim Brown. The Plaintiff-Trustee also requested that the court order \$500.00 a day sanctions against Tim Brown. Rather than imposing the immediate \$500.00 a day sanctions, the court elected to give Tim Brown one more chance to honor his word and turn over the vehicles.

The Trustee seeks to recover \$2,532.00 in fees and \$151.34 in costs caused by Tim Browns failure to comply with the mandatory injunction to turn over the vehicles in the judgment and the order of this court for the period August 13, 2013 through October 22, 2013. Declaration, Dckt. 95; Exhibit 1,

Time Records, Dckt. 96. The court determines these fees to be reasonable and awards them as compensatory damages.

With respect to the corrective sanctions, though afforded the opportunity to simply turn over the vehicles as he promised in open court on the record and as now been ordered two time since, having notice of corrective sanctions totaling \$31,915.00 were not sufficient for Tim Brown to comply with the court's order. Possible, the actual award of the \$31,915.00 in corrective sanctions may be sufficient to induce him to prospectively comply with the order and not have an additional \$31,915.00 in corrective sanctions ordered.

The court imposed a monetary corrective sanction award in the amount of \$31,915.00 to be paid by Tim Brown to the Clerk of the United States Bankruptcy Court, for deposit in the United States Treasury, on or before November 8, 2013. If not paid, the Chapter 7 Trustee may enforce this sanction award in the same manner as a judgment entered by this court, and pay the monies recovered to the Clerk of the Court.

Tim Brown has demonstrated that further corrective sanctions must be ordered by this court. The court further ordered that Tim Brown shall pay further corrective sanctions of \$31,915.00 to the Clerk of the Court if the (1) 1997 Harley Davidson Red Fat Boy Motorcycle, VIN ending in 32282 and (2) the 2007 Chevrolet Corvette Automobile, Licence No. 5XYR543, VIN ending in 33800, are not delivered to the Chapter 7 Trustee by the close of business on November 21, 2013.

The additional \$31,915.00 sanction was determined an appropriate amount because it represents the value of the two vehicles. Given Tim Brown's conduct to date, a lesser amount would likely not have the necessary corrective effect and induce compliance with the court's order. A lesser amount could cause Tim Brown to conclude that he can just "buy the vehicles" and "buy off the court" for an amount less than the vehicles are worth, given that he is already having to pay \$31,915.00.

If Tim Brown failed to turn over the vehicles as ordered by the court, then the court shall impose the \$31,915.00 in corrective monetary sanction and set the Motion for further hearing for further corrective sanctions. In addition to Tim Brown then, if he fails to comply, elevating this to a situation where the court will be justified in ordering the U.S. Marshall to take and hold Tim Brown in custody until he turns over this property of the estate, the matter may also be referred to the U.S. District Court for the imposition of appropriate punitive sanctions, including incarceration for such period of time as the District Court judge determines appropriate for the failure to comply with this court's order.

DECEMBER 19, 2013 HEARING

On December 3, 2013, the Trustee filed a Status Report stating that Tim Brown has failed to comply with the court's order, as no vehicles, required documents, or information has been turned over to the Trustee. Trustee also states that Tim Brown has not paid monetary damages to the Trustee. The Trustee estates that additional \$295.00 in legal fees and costs have been incurred due to Mr. Brown's failure to comply with the court's order.

No response has been filed by Mr. Brown to date.

10. [13-90481](#)-E-7 HENRY STACHER
[13-9022](#)
STACHER V. STACHER

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
6-21-13 [[1](#)]

Plaintiff's Atty: G. Michael Williams
Defendant's Atty: Eric K. Alford

Adv. Filed: 6/21/13
Answer: none

Nature of Action:
Dischargeability - domestic support
Dischargeability - divorce or separation obligation (other than domestic support)

Final Ruling: The Status Conference is continued to 2:30 p.m. on January 30, 2014, to allow the parties the opportunity to consummate settlement negotiations.

Notes:

Continued from 10/31/13

11. [13-90888](#)-E-7 MICHAEL/ANN BADIOU
[13-9027](#)
SENTRY SELECT INSURANCE
COMPANY ET AL V. BADIOU

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
8-5-13 [[1](#)]

Plaintiffs' Atty:
Robert B. Salley [Sentry Select Insurance Company]
Michael B. Ijams [American Chevrolet-Geo, Inc.]
Defendant's Atty: Pro Se

Adv. Filed: 8/5/13
Answer: 8/30/13

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:

Continued from 10/31/13

[ACG-1] Motion to Dismiss Counterclaim for Failure to State a Claim Upon Which Relief Can be Granted; or, in the Alternative, Motion for More Definite Statement filed 9/19/13 [Dckt 8]; Order granting and giving Defendant leave to file a second amended counterclaim on or before 11/14/13 filed 11/6/13 [Dckt 25] [not filed as of 12/9/13]

Case Management Conference Statement filed by Defendant 12/12/13 [Dckt 29]

SUMMARY OF COMPLAINT

The Complaint seeks a determination on nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2), (4), and (6). The conduct alleged to be the basis for the action relates to the sale of vehicles for which the Defendant-Debtor failed to account and pay plaintiff's predecessor in interest (the insured). It is asserted that the outstanding obligation at issue is \$349,899.75.

SUMMARY OF ANSWER

The Answer specifically admits and denies allegations in the Complaint. Seven affirmative defenses are stated.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1,2, Dckt. 1. In its answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 6. **To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.**

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157(b)(2), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1,2, Dckt. 1. In its answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶ 1, Dckt. 6. **To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.**
- b. Initial Disclosures shall be made on or before ----, **2014**.

- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.

12. [13-91194-E-7](#) **ARACELI RICO**
[13-9033](#)
MODESTO IRRIGATION DISTRICT V.
RICO

STATUS CONFERENCE RE: COMPLAINT
10-2-13 [[1](#)]

Plaintiff's Atty: Merle C. Meyers
Defendant's Atty: James D. Pitner

Adv. Filed: 10/2/13
Answer: 11/18/13

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - fraud as fiduciary, embezzlement, larceny
Dischargeability - willful and malicious injury

Notes:

Joint Status Conference Statement filed 12/12/13 [Dckt 11]

SUMMARY OF COMPLAINT

The Plaintiff alleges that the Defendant-Debtor obtained unauthorized electrical service from Plaintiff. This included altering the connections to bypass the power meters. The obligation for the unauthorized power used is computed to be \$123,792.97. It is asserted that this obligation is nondischargeable pursuant to 11 U.S.C. § 523(a)(2), (4), and (6).

SUMMARY OF ANSWER

The Answer specifically admits and denies allegations in the Complaint. Four affirmative defenses are stated by the Defendant-Debtor.

FINAL BANKRUPTCY COURT JUDGMENT

The Complaint alleges that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 3, Dckt. 1. In its answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 3, Dckt. 9. To the extent that any issues in this Adversary Proceeding are "related to" matters, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all issues and claims in this Adversary Proceeding referred to the bankruptcy court.

The court shall issue a Pre-Trial Scheduling Order setting the following dates and deadlines:

- a. The Plaintiff alleges that jurisdiction exists for this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334 and 157(a), and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Complaint ¶¶ 1, 3, Dckt. 1. In its answer, Defendant-Debtor admits the allegations of jurisdiction and core proceedings. Answer ¶¶ 1, 3, Dckt. 9. This matter has been referred to this bankruptcy court from the United States District Court for the Eastern District of California. To the extent that any issues in this Adversary Proceeding are related to proceedings, the parties consented on the record to this bankruptcy court entering the final orders and judgement in this Adversary Proceeding as provided in 28 U.S.C. § 157(c)(2) for all claims and issues in this Adversary Proceeding referred to the bankruptcy court.
- b. Initial Disclosures shall be made on or before ----, 2014.
- c. Expert Witnesses shall be disclosed on or before -----, 2013, and Expert Witness Reports, if any, shall be exchanged on or before -----, 2014.
- d. Discovery closes, including the hearing of all discovery motions, on -----, 2014.
- e. Dispositive Motions shall be heard before -----, 2014.
- f. The Pre-Trial Conference in this Adversary Proceeding shall be conducted at ----- p.m. on -----, 2014.